

## **REMARKS**

In the Board Decision mailed March 28, 2007, the Board rejected claims 3-5 and 8-10. Claims 3-5 and 8-10 have been amended, and new claim 11 has been added. Claims 4 and 9 have been rejected as indefinite by the Board. Claims 3 and 8 have been rejected by the Board as anticipated by Ford. Claims 4, 5, 9 and 10 stand indicated by the Examiner as allowable over the prior art if rewritten into independent form. Claim 3-5 and 8-11 are pending for consideration. No new matter has been added. The Board's rejections are traversed below.

Claim 4, 5, 9 and 10 have been rewritten into independent form and to overcome the indefiniteness rejection of claim 4 and 9 as discussed below. It is submitted that these claims have not been narrowed and have the same scope as prior to being made independent and are now allowable. Allowance of claims 4, 5, 9, and 10 is requested.

In the discussion of the indefiniteness of claim 4 on pages 7 and 8 of the Decision, the Board indicated that there were two different interpretations of claim 4 (and claim 9 was found to be of similar scope). The first interpretation is that the variable attenuator is set to the same level as that of the signal from the transmitter. The second interpretation is that the attenuator is set low enough to prevent the destruction of a following WDM apparatus when an abrupt signal occurs. Claims 4 and 9 have been amended to clarify that the second interpretation is what is being claimed. It is submitted that claims 4 and 9 are definite and the rejection for indefiniteness should be withdrawn.

As discussed on pages 8-10 of the Decision concerning the anticipation rejection over Ford, the Board interpreted the phrase "predetermined value" as a value that can be set "ahead of time" time by an equation. That is, the "predetermined value" can be set by an equation. The Board noted that the application, at pages 17-18, calls for the predetermined value to be fixed ("predetermined fixed value") and also noted that claim 3 was not so limited. Claims 3 and 8 have been amended to emphasize the fixed nature of the predetermined value. It is submitted that Ford discusses non-fixed values set by an equation and does not teach or suggest predetermined fixed values. It is submitted that claims 3 and 8 distinguish over Ford.

New claim 11 emphasizes setting an attenuation of a variable attenuator to a fixed amount when a corresponding WDM input is determined as disconnected in contrast to the setting of attenuation based on an equation as in Ford. Nothing in the prior art teaches or suggests claim 11. It is submitted that this new claim, which is different and not narrower than prior filed claims, distinguishes over the prior art.

It is submitted that the claims satisfy the requirements of 35 U.S.C. 112. It is also

submitted that claims 4, 5, 9 and 10 continue to be allowable over the prior art. It is further submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

If any further fees, other than and except for the issue fee, are necessary with respect to this paper, the U.S.P.T.O. is requested to obtain the same from deposit account number 19-3935.

Respectfully submitted,

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